

C. Remarks

The claims are 20-25, with claims 20, 22 and 24 being independent. Claims 20-24 have been amended to clarify the invention. New claims 24 and 25, directed to a preferred embodiment of the invention, have been added. Reconsideration of the present claims is respectfully requested.

Claims 20-23 stand rejected under 35 U.S.C. §112, first paragraph, as the Examiner alleges that the Applicants have not set forth a representative number of examples in order to reasonably verify possession of such a potentially enormous number of extracts. Applicants respectfully traverse this rejection.

The term "extract" is well understood in the art. One of ordinary skill in the art can readily choose a suitable type of extract to use in formulating a topical composition according to the present invention. This general knowledge, coupled with the guidance provided in the present specification at, inter alia, paragraphs [0018] and [0020], is enough to show that Applicants had possession of the invention which utilizes both grape and green tea extracts. What is more, one of ordinary skill in this art would readily appreciate that some types of extracts may be better suited for the topical compositions of this invention; for example, it is preferred according to the invention that the grape seed and green tea extracts are prepared as dried powders. Accordingly, Applicants respectfully request withdrawal of the §112 rejection.

Claims 20-23 stand rejected under 35 U.S.C. §103(a) as being obvious over Huddleston in view of Cui in view of Wada. Applicants respectfully traverse this rejection.

The present claims now define a topical composition and method for treating acne caused by the bacterium *Propionibacterium acnes*. Treatment is accomplished using two active ingredients only - namely grape seed extract and green tea extract - in an amount sufficient to inhibit the growth of the bacterium *Propionibacterium acnes*. In a preferred embodiment of the presently claimed invention, the topical composition comprises a 25/25/20/30 grape seed extract/green tea extract/1,3-butylene glycol/water topical composition; in a further preferred embodiment, the grape seed extract and the green tea extracts are in dried form for incorporation in the topical composition.

Simply put, none of the cited references discloses or suggests the present combination of active ingredients, as noted by the Examiner. The Examiner's argument is essentially as follows: It would have been obvious to combine two or more ingredients, each of which is taught by the prior art to be useful for the same purpose, to form a third composition which is useful for the same purpose, and one of ordinary skill in the art would have a reasonable expectation that a combination consisting essentially of grape seed extract and green tea extract would be useful to treat acne. Applicants respectfully disagree with the Examiner's position for several reasons.

First, Huddleston fails to teach the use of green tea extract in a topical composition to treat acne. Instead Huddleston is directed to a summary regarding teas and their uses in general. While noting that green tea has been shown to be antimicrobial, Huddleston indicates that green tea has the ability to kill *Bacterium acne*. There is no teaching of green tea extract for that purpose. What is more, at other portions of the

reference, specific reference is made to green tea extracts for other uses, i.e., to destroy *E. coli* and *Salmonella*. An implication from Huddleston is that drinking green tea might be useful in treating acne, but Huddleston contains no disclosure or suggestion relating to the use of green tea extract in a topical composition to treat acne. Cui and Wada do not remedy this deficiency.

Applicants do not dispute that Cui teaches the use of grape seed extract in a topical composition for the treatment of acne. However, as noted by the Examiner, Cui provides no teaching with regard to the combination of grape seed extract with green tea extract for this purpose.

Wada is directed to a cosmetic composition for treating acne. While Wada does disclose the use of 1,3-butylene glycol in such a composition, all compositions of Wada necessarily include sulfur and zinc oxide as active ingredients. Accordingly, it cannot be fairly said that Wada's teaching of the use of 1,3-butylene glycol can be applied to all anti-acne compositions; instead Wada's teachings should be limited to compositions containing similar active ingredients. One of ordinary skill in the art would not find that green tea extract and grape seed extract are similar actives to zinc oxide and sulfur.

In addition, Applicants submit that it is only through an impermissible hindsight analysis that the Examiner arrives at the topical compositions of the present invention. The universe of anti-acne active agents is a large one. Even larger are the universes of antimicrobial agents (like green tea extract) and antioxidant agents (like grape seed extract). There is simply no teaching or suggestion in the cited art to choose the two

particular active agents employed in the present invention, let alone to use extracts of both grape seed and green tea and to form topical compositions. The Examiner has already recognized this point, i.e., the unlikelihood of picking these particular extracts, as the Examiner noted that “the possible variations of extracts are limitless” in the outstanding §112 rejection.

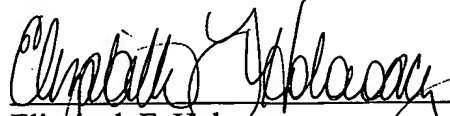
What is more, when combining two different anti-acne active agents, there is no reasonable likelihood of success in achieving a composition suitable for the purposes sought. Especially in the realm of extracts where it may be difficult to extract an antimicrobial agent and where use of the whole root or whole seed of a botanical is more likely, the combination of two extracts is not without hesitation or problems. For example, a grape seed extract composition shows significant inhibition of *Propionibacterium acnes* at a level of 0.03%, while a green tea extract composition and a cranberry extract composition show significant inhibition at 0.13% and 1%, respectively. A combination of cranberry extract and grape seed extract shows significant inhibition of *Propionibacterium acnes* at a level of 0.06%, a level twice that effective when using grape seed extract alone. On the other hand, a combination of green tea extract and grape seed extract shows significant inhibition of *Propionibacterium acnes* at a level of 0.03%, the same level effective as when using grape seed extract alone. It is unclear why combination with cranberry negatively impacts the efficacy level of grape seed extract; similarly it is unclear why combination with green tea extract doesn't. It is clear, however, that this example goes to show that combination of extract materials can be difficult and/or unpredictable.

For all of the above reasons, Applicants submit that the previously pending claims are not rendered obvious by the cited combination of Huddleston, Cui and Wada. Furthermore, the cited combination does not render obvious new claims 24 and 25, as they are directed to very specific embodiments of the present invention, i.e., weight ratios, dried extracts, etc. Accordingly, Applicants respectfully request withdrawal of the §103 rejection.

In view of the foregoing amendments and remarks, favorable reconsideration and passage to issue of the present case is respectfully requested. Should the Examiner believe that issues remain outstanding, the Examiner is respectfully requested to contact Applicant's undersigned attorney in an effort to resolve such issues and advance the case to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,



Elizabeth F. Holowacz
Attorneys for Applicants
Registration No. 42,667

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200